

REMARKS/ DISCUSSION OF ISSUES

In the present Amendment, claims 10-12 have been amended such that they are each placed in independent form by each incorporating the limitations of claim 1 and intervening claim 9. Claims 1-9 have now been canceled such that the current amendments do not raise any new issues that would require further consideration and/or search. Moreover, claims 13-20 have also been canceled in order to remove issues for appeal. No new matter has been added. Amended claims 10-12 are pending.

I. Claim rejections under 35 U.S.C. § 102(b)

Claims 1, 2, 6, 7, 13-16, and 18-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0144147 to *Basson et al.* (*Basson*). However, in view of the cancelation of claims 1-9 and 13-20, this rejection is now moot.

II. Claim rejections under 35 U.S.C. § 103(a)

A. General requirements for a claim rejection under 35 U.S.C. § 103

According to 35 U.S.C. § 103(a):

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To make the obviousness determination, the U.S. Supreme Court held in *Graham v. John Deere Co.*, 383 U.S. 1 (1966) that three factors must be considered:

- (1) the scope and content of the pertinent prior art;
- (2) differences between the pertinent prior art and the invention at issue; and
- (3) the ordinary level of skill in the pertinent art.

The U.S. Supreme Court clarified in *KSR Intern. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 that a non-obviousness determination must include an inquiry as to “whether the improvement is more than

the predictable use of prior art elements according to their established functions.” Also, the Court in *KSR* stated that:

[I]t will be necessary for the court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having the ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.

However, the Court in *KSR* emphasized that “the analysis [of non-obviousness] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take into account of the inferences and creative states that a person of ordinary skill in the art would employ”.

B. Rejection of Claims 3 and 8 under 35 U.S.C. § 103(a)

In the present Office Action, claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Basson* in view of U.S. Patent No. 6,047,322 to *Vaid et al.* (*Vaid*). Moreover, claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Basson* in view of U.S. Patent No. 6,643,367 to *White-Hauser et al.* (*White-Hauser*). However, in view of the cancelation of claims 1-9 and 13-20, these rejections are now moot.

C. Rejection of Claims 4, 5, 9-12, and 17 under 35 U.S.C. § 103(a)

In the present Office Action, claims 4, 5, 9-12, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Basson* in view of U.S. Patent No. 5,367,670 to *Ward et al.* (*Ward*). Since claims 4, 5, 9, and 17 have been canceled, Applicant shall address the rejections as they pertain to amended claims 10-12.

The combination of *Basson* and *Ward* does not render Applicant’s claimed invention unpatentable because that combination does not suggest, to one skilled in the art at the time of Applicant’s invention, several of the features recited by Applicant’s amended Claims 10-12. First, by Examiner’s own admission (page 9, 2nd paragraph of Final Office Action), *Basson* fails to teach or suggest the idea of determining whether the following threshold metric types have been satisfied:

Claim 10: when a number of queued alert conditions for a resource management system satisfies a threshold number;

Claim 11: when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time; and

Claim 12: when a threshold rate of alert conditions are received for the resource management system.

In response, the present Office Action cites *Ward* for the proposition that it teaches the above limitations. However, *Ward* fails to make up for the admitted deficiencies in *Basson*. For each one of the dependent claim limitations described above, the Examiner has cited column 2, lines 62-66 of *Ward*. This cited portion states: “In alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of **voltage** supplied to the system manager or the **temperature** at which the system manager operates.” While the Examiner may be asserting the general idea of determining alert conditions based upon monitored information transfers, the idea of measuring voltage and/or temperature has no relevance to the particular type of threshold metrics recited in Applicant’s claims 10, 11, and 12.

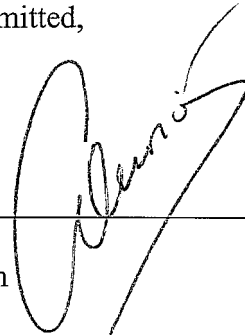
From the above discussion/arguments and the reasons provided therein, it is clear that the combination of references does not suggest key features of Applicant’s claimed invention. One skilled in the art would not find Applicant’s claimed invention unpatentable over the combination of references. The above claims are therefore allowable over the combination.

CONCLUSION

Applicant has diligently responded to the Office Action by amending the claims to more completely recite the novel features within specific claims. Applicant has also canceled several claims in order to narrow the issues for discussion. Applicant has also provided discussion/arguments which explain why Applicant's claims are not anticipated by or obvious in light of the references provided. The claim cancellations and amendments and the proffered arguments overcome the §102 and 103 rejections, and Applicant, respectfully requests issuance of a Notice of Allowance for all claims now pending.

Applicant further invites the Examiner to contact the undersigned attorney of record at 512.343.6116 if such would further or expedite the prosecution of the present Application.

Respectfully submitted,



Carlos E. Amorín
Reg. No. 48,379
DILLON & YUDELL LLP
8911 North Capital of Texas Highway, Suite 2110
Austin, Texas 78759
512.343.6116

ATTORNEY FOR APPLICANT